ARIZONA MEDICAL ASSOCIATION

Arizona Osteopathic Medical Association

September 19, 2018

Mary E. Kosinski
Arizona Department of Insurance
100 N. 15th Ave., Suite 102
Phoenix, AZ 85007-2624

Sent via email: mkosinski@azinsurance.gov

Dear Ms. Kosinski,

On behalf of Arizona physicians, the Arizona Medical Association (ArMA), and the Arizona Osteopathic Medical Association (AOMA), we submit our comments on the Department of Insurance (DOI) draft proposed rules to clarify the out-of-network billing dispute resolution process.

We sincerely appreciate all of the years of work by the DOI staff on this complicated and challenging issue, and the very thorough job done on this proposed rule package. We are fully committed to supporting the DOI's efforts to protect consumers and ensure that out-of-network billing disputes are efficiently and fairly resolved for all parties.

As principals for the physician community in the lengthy stakeholder process resulting in the passage of SB 1441 (insurers; health providers; claims arbitration), and active participants on SB 1064 this last session, we set aside many policy differences, made concessions, and compromised on solutions with the best interests of patients in the forefront. While we continue to have concerns about the impact on physicians and other providers as a result of SB 1441 and SB 1064, our comments in this letter are specific to the proposed rules and are not intended to re-litigate the underlying legislative policies.

Our primary goal is to work with the DOI and other stakeholders to ensure the out-of-network billing dispute resolution process is efficient, user-friendly, and effective. Below we have highlighted areas of concern and recommendations.

<u>Issue #1 – Process for Notification of a Qualifying Surprise Out-of-Network Bill for Informal Settlement Teleconference and Arbitration</u>

R20-6-2402 C.1 stipulates that when a surprise out-of-network bill qualifies for an Informal Settlement Conference (ISC), that notification be mailed by the DOI to the

enrollee, health insurer and healthcare provider. The primary and collective goal for all parties involved should be the settlement of a qualifying out-of-network bill prior to or during the ISC. Therefore, it is in the best interest of the DOI, the enrollee, health insurer and healthcare provider that each participant be successfully notified so they can prepare for and participate in a productive, informal teleconference.

We respectfully request this ISC notification not be solely limited to U.S. mail and that it additionally include email and telephone notification options to provide greater flexibility to the DOI. Furthermore, we suggest language be included to ensure that the DOI makes a reasonable attempt to confirm notification was received to ensure the likelihood of full participation by the enrollee, health insurer and healthcare provider in the Informal Settlement Conference, and mitigate the need for arbitration.

Issue #2 – Deadline to Arrange Informal Settlement Teleconference

R20-6-2403 A. requires the DOI to arrange an ISC "within 30 days" of mailing the notification to the enrollee that a request for arbitration has qualified. We respectfully request that a timeframe be affixed to this process to ensure all parties receive timely notice within a specified timeframe (e.g. no more than 2-3 days following the arbitration qualification notification) that the ISC has been scheduled. And, we respectfully request that adequate advance time (of at least 7 days) be allotted to ensure that the ISC is not being imposed on the parties at the last moment.

We are extremely concerned about the consequences on busy physicians (and their other patients) of receiving inadequate notice, and potentially being compelled to postpone/reschedule critical patient visits, diagnostic procedures, surgeries, etc. in order to participate in an ISC. If our goal is to incentivize the use of the ISC as much as possible (as we believe it should be), the scheduling and notification processes must be user-friendly for all parties involved.

We understand that the scheduling of ISCs will be a new and challenging responsibility for the staff of the DOI. And we understand that a representative may substitute for the physician on the ISC. However, we foresee that in many cases the physician's representative (likely to be a layperson not trained in medicine or familiar with the patient's care) would be more of a placeholder than a meaningful participant. If the treating physician cannot participate personally, this could negatively affect the quality of the ISC and the ability of the parties to have a meaningful and productive discussion towards a fair resolution of the surprise billing issue. Therefore, we respectfully urge that practical steps be taken by the DOI to help ensure, where reasonably possible, that the ISC scheduling process is realistic and workable with due recognition of today's extremely busy physician practice environment.

Issue #3 – Scheduling Flexibility for Informal Settlement Conference & Arbitration

R20-6-2403 B. requires the DOI to notify the parties of the date, time and call-in number for the Informal Settlement Conference. We recognize it would be challenging for the DOI to find a suitable date and time for everyone to participate. However, as noted before, if the date and time chosen is not conducive for participation it will severely undermine the goal of resolving these disputes amicably through the ISC process.

In a similar vein to our comments above, we respectfully request the ability of the enrollee, health insurer, and provider to work independently of the DOI to schedule an alternative date and time that is agreeable to all parties. We also ask that the DOI please be considerate of the impact of scheduling ISCs during peak physician practice hours to avoid or minimize disruption to patient access to care, e.g. hospital surgeries, on-call coverage in hospitals, etc.

Issue #4 – Qualifications and Fees for Arbitrators

R20-6-2404 B. & D. stipulates the qualifications of arbitrators, and the appointment and selection process by the health insurer and provider. There are no provisions in the proposed rules to require disclosure of any of the qualifications and background of the arbitrators under consideration. At a minimum the health insurer and healthcare provider should be informed of each arbitrator's requisite health care services claims experience and work history (e.g., has the arbitrator been employed by health insurers or healthcare providers?).

In addition, absent a fee schedule (or limits on the arbitrators' fees), we respectfully suggest there should be a required disclosure of each arbitrator's services and proposed fees to allow cost considerations to be considered in the arbitrator selection process.

We are confident that our concerns and recommendations are reasonable and keeping with the intent and spirit of the legislation. We remain flexible and open to alternative solutions to those proposed that might be more conducive to the DOI providing an efficient and fair process for everyone involved. If limited resources are a barrier to the DOI providing an optimal resolution process, we are steadfast in our support of added funding for the DOI and if necessary willing to advocate for that on your behalf.

Thank you for this opportunity to comment on the proposed rules and for your consideration of our concerns.

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